

Pursuant to Ind. Appellate Rule 65(D),
this Memorandum Decision shall not be
regarded as precedent or cited before
any court except for the purpose of
establishing the defense of res judicata,
collateral estoppel, or the law of the case.

APPELLANT PRO SE:

RUSSELL B. SPEARS
Montclair, New Jersey

**IN THE
COURT OF APPEALS OF INDIANA**

RUSSELL SPEARS,)	
)	
Appellant,)	
)	
vs.)	No. 02A03-0607-CV-295
)	
TURSHA SPEARS,)	
)	
Appellee.)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Thomas J. Felts, Judge
Cause No. 02C01-0102-DR-137

October 6, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Russell B. Spears (“Father”), pro se, appeals the trial court’s custody order.

We affirm.

ISSUE

Whether the trial court erred in awarding Tursha L. Hickman¹ (“Mother”) care and custody of S.A.S.

FACTS

The facts, as alleged by Father, follow. Father and Mother were married on July 8, 1994. S.A.S. was born on January 13, 1995. Although Father and Mother separated in July 1995, their marriage was not dissolved by a final dissolution decree until April 10, 2003. Father and Mother had joint custody of S.A.S., with Father exercising parenting time on the weekends and holidays.

In the fall of 2004, Mother arranged with Father to have S.A.S. live with Father “while [Mother] attempted to go back to school.” (Tr. 11). Mother would exercise visitation on the weekends. S.A.S. lived with Father for approximately nine months. Mother attended school “[f]or just a semester” because she “couldn’t afford to continue to go to school.” (Tr. 15).

Father moved to New Jersey in 2005. On August 11, 2005, Father filed a “Verified Petition to Move Residence, Modify Custody, Parenting Time, Child Support and Attorney Fees.” (Tr. 4). The trial court held a hearing on January 19, 2006, at which

¹ Mother did not file an appellee’s brief. “[W]e do not undertake the burden of developing arguments for the appellee.” Damon Corp. v. Estes, 750 N.E.2d 891, 892-93 (Ind. Ct. App. 2001). In such cases, we apply a less stringent standard of review with respect to demonstrating reversible error; accordingly, we will reverse if the appellant can establish *prima facie* error. Id. at 893.

Mother appeared *pro se*. According to Father's brief, the trial court awarded full custody of S.A.S. to Mother.

DECISION

Father asserts the trial court abused its discretion in awarding custody of S.A.S. to Mother. Specifically, Father argues that the trial court failed to consider all of the relevant factors in considering the best interests of S.A.S. and that the modification of custody was not in the best interests of S.A.S.

We review a trial court's custody decision for an abuse of discretion. Rea v. Shroyer, 797 N.E.2d 1178, 1181 (Ind. Ct. App. 2003). When reviewing a trial court's determination, we may not reweigh the evidence or judge the credibility of the witnesses. Id. "Rather, we consider only the evidence most favorable to the judgment and any reasonable inferences from that evidence." Id.

Regarding modification of child custody orders, Indiana Code section 31-17-2-21 provides in relevant part:

(a) The court may not modify a child custody order unless:

(1) the modification is in the best interests of the child; and
(2) there is a substantial change in one (1) or more of the factors that the court may consider under section 8 and, if applicable, section 8.5 of this chapter.

(b) In making its determination, the court shall consider the factors listed under section 8 of this chapter.

Section 8 provides:

The court shall determine custody and enter a custody order in accordance with the best interests of the child. In determining the best interests of the

child, there is no presumption favoring either parent. The court shall consider all relevant factors, including the following:

- (1) The age and sex of the child.
- (2) The wishes of the child's parent or parents.
- (3) The wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.
- (4) The interaction and interrelationship of the child with:
 - (A) the child's parent or parents;
 - (B) the child's sibling; and
 - (C) any other person who may significantly affect the child's best interests.
- (5) The child's adjustment to the child's:
 - (A) home;
 - (B) school; and
 - (C) community.
- (6) The mental and physical health of all individuals involved.
- (7) Evidence of a pattern of domestic or family violence by either parent.
- (8) Evidence that the child has been cared for by a de facto custodian, and if the evidence is sufficient, the court shall consider the factors described in section 8.5(b) of this chapter.

The parent seeking modification of a custody determination bears the burden of demonstrating that the existing custody should be altered. Apter v. Ross, 781 N.E.2d 744, 758 (Ind. Ct. App. 2003), trans. denied. Thus, it is Father who must prove that there was a substantial change in one of the factors from Indiana Code section 31-17-2-8 as to justify a modification of the original custody order. See In re Paternity of B.D.D., 779 N.E.2d 9, 14 (Ind. Ct. App. 2002). In effect, the court found a substantial change had occurred and that a modification from joint custody to full custody in mother was in the best interest of the child

In this case, Father submitted a transcript of the January 19 hearing along with the admitted exhibits. Father, however, did not file an appendix. Indiana Appellate Rule

8(A) instructs that “[t]he appellant shall file its Appendix with its appellant’s brief.”

Indiana Appellate Rule 50(A) further provides in relevant part:

(1) *Purpose*. The purpose of an Appendix in civil appeals . . . is to present the Court with copies of only those parts of the record on appeal that are necessary for the Court to decide the issues presented.

(2) *Contents of Appellant’s Appendix*. The appellant’s Appendix shall contain a table of contents and copies of the following documents, if they exist:

(a) the chronological case summary for the trial court . . . ;

(b) the appealed judgment or order, including any written opinion, memorandum of decision, or findings of fact and conclusions thereon relating to the issues raised on appeal;

* * * * *

(f) pleadings and other documents from the Clerk’s Record in chronological order that are necessary for resolution of the issues raised on appeal;

* * * * *

(h) any record material relied on in the brief unless the material is already included in the Transcript[.]

Father has not provided any of those items required by Indiana Appellate Rule 50, including the trial court’s order at issue, the original custody order or any other pleadings. In addition, Father’s brief is deficient due to the lack of citations to authorities and “the Appendix or parts of the Record on Appeal relied on, in accordance with Rule 22.” Ind. Appellate Rule 46(A)(8)(a). While we acknowledge that Father is acting pro se, “[i]t is well settled that pro se litigants are held to the same standard as are licensed lawyers.” Goossens v. Goossens, 829 N.E.2d 36, 43 (Ind. Ct. App. 2005). Given the lack of record, Father has failed to demonstrate any error by the trial court.

Affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.